

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4444 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NARENDRAKUMAR S NARKHADE & ANR.

Versus

JAMBUSAR NAGAR PANCHAYAT

Appearance:

None present for Petitioners

None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/12/96

ORAL JUDGEMENT

The matter was called out for hearing in the first round then in the second round in first sitting and in third round in second sitting, but none put appearance on behalf of the petitioner.

Perused the Special Civil Application. Briefly the facts of this case are that the petitioners are doing petty business by putting their cabin and lorry near the

wall in Kot Darwaja area of Jambusar. On 28th January, 1986, the President of the respondent Nagar Panchayat came at the place where the cabin and lorry are placed by the petitioners and threatened that the petitioners should remove their cabin and lorry and in case the same are not removed within a day or two, the same would be removed by the staff of the Nagar Panchayat. The petitioners approached to the court of Civil Judge (J.D.), Jambusar by filing civil suit no.27/86. This suit has been filed on 29th January, 1986. The petitioners filed an application Ex.5 with the plaint in which the prayer has been made for grant of ad-interim injunction restraining the respondent and its servants or agents from interfering the petitioners to do their business in the cabin and lorry at the place mentioned in the plaint. Though it appears that earlier interim relief has been granted but later on, on application filed by the respondent the same has been vacated on 5th September, 1986 by the trial court. The petitioner feeling aggrieved by the order dated 5-9-1986 of the trial court, filed Miscellaneous Civil Appeal No.37/87 in the court of District Judge, Bharuch. The said appeal has been dismissed on 27th August, 1987 by the appellate court and hence this Special Civil Application.

The orders which have been impugned in this Special Civil Application have been made in a civil suit. This court will not permit extraordinary jurisdiction to be converted into a civil court under ordinary law. When a suit is pending and trial court or the appellate court makes a miscellaneous order, the same cannot be challenged by way of writ petition under Article 227 or 226 of Constitution of India. The reason is very obvious, as against the miscellaneous orders passed by the civil court in a pending civil suit, sufficient remedies are being provided in the Civil Procedure Code, 1908. Reference in this respect may have to the two decisions of the Supreme Court in the case of Swetamber S. Jain Samiti vs. Alleged Comtt. of Management reported in JT 1996 (3) SC 21 and in the case of Durgaprasad vs. Navinchandra JT 1996 (3) SC 564. In view of the aforesaid two decision of the Supreme Court this Special Civil Application is not maintainable.

In the result this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this court stands vacated.

zgs/-

